

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aero-Colours, Inc.,

Plaintiff,

v.

Civil No. 11-316 (JNE/SER)
ORDER

Emil Charles Krepelka II and,
Emil Charles Krepelka III,

Defendants.

This matter is before the Court on Plaintiff Aero-Colours, Inc.'s Motion for Preliminary Injunction. Defendants Emil Charles Krepelka II and Emil Charles Krepelka III have made no appearance in this action. Their answer to the complaint was due on March 14, 2011; none was filed, and they have made no response to the current motion. Defendants were served with the summons, complaint, motion for preliminary injunction, and notice of motion on February 19, 2011. On April 7, 2011, at 11:00 a.m., the Court held a hearing on the motion. Defendants did not appear. The Court, having considered the arguments and evidence presented by Aero-Colours, issues a preliminary injunction for the reasons set forth below.

On the limited record before the Court, the Court finds that Aero-Colours is likely to succeed on the merits of its trademark and breach of contract claims. Absent injunctive relief, Aero-Colours faces the threat of irreparable harm based on: (1) the Defendants' continued, unauthorized use of the Aero-Colours trademark, logos, and marks, and the resulting customer confusion; and (2) the Defendants' continued operation of their Aero-Colours franchise and use of Aero-Colours know-how and training, despite termination of the franchise agreement, undermining both the franchise system and other franchisees who comply with the franchise agreement. The balance of harms and public interest weigh in favor of Aero-Colours. The Court

concludes that a preliminary injunction that prevents the Defendants' continued use of the Aero-Colours trademark, logo, or mark, and enjoins continued operation of a competing business in the geographic areas set forth in the parties' franchise agreement and until further ordered by this Court is appropriate. Aero-Colours need not post a bond in connection with this injunction.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Defendants Emil Charles Krepelka II and Emil Charles Krepelka III:
 - a. Cease and refrain from directly or indirectly, on their own account, or as an employee, consultant, agent, joint venturer, or salesman or member or 10% owner, or partner, or officer of any other person, firm, partnership, corporation or other entity, or in any other capacity, in any way conducting, engaging in, or aiding or assisting anyone in the conduct of a business competitive with Aero-Colours in the counties where they operated their authorized Aero-Colours franchise (the Counties of Cape May, Cumberland, Salem, Atlantic, Gloucester, Camden and Burlington in the state of New Jersey) and any other geographic area where Aero-Colours operates franchised or company-owned businesses, until further order of the Court. Specifically, Defendants are hereby enjoined from providing any automotive painting or touch-up products or services within the territory described above, until further order of the Court.
 - b. Cease and refrain from: (i) using and/or removing any names, marks, signs, forms, advertising, manuals, supplies, products, merchandise and all other things and materials of any kind which are identified or associated with the Aero-Colours name, logo or marks, or which contain a name, logo or mark confusingly similar to the Aero-Colours name, logo or marks; and (ii) making any representation or statement that Defendants are in any way approved, endorsed or licensed by Aero-Colours, or are identified with Aero-Colours in any way. Defendants must also return to Aero-Colours all signs, forms, manuals, supplies, products, merchandise and all materials of any kind which are identified or associated in the mind of the consuming public with Aero-Colours.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 7, 2011

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge